

FROM

(FRI) MAY 4 2012 9:53/ST. 9:52/No. 7500000548 P 2

COURT FILE NUMBER

1201-04183

Clerk's stamp:

COURT

COURT OF QUEEN'S BENCH

JUDICIAL CENTRE

CALGARY

PLAINTIFF

THE ART GALLERY OF CALGARY SOCIETY

DEFENDANT

VALERIE COOPER

STATEMENT OF CLAIM

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF PARTY  
FILING THIS DOCUMENT

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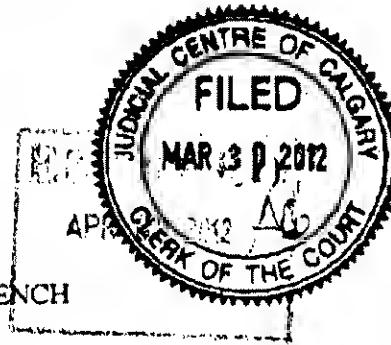
**NOTICE TO DEFENDANT**

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

**Note: State below only facts and not evidence (Rule 13.6)**

**Statement of facts relied on:**



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**The Parties:**

1. The Plaintiff is a body corporate incorporated pursuant to the laws of the Province of Alberta with head office in Calgary, Alberta. The Plaintiff operates a public non-collecting art gallery in the City of Calgary and is registered with Revenue Canada as a charitable institution. The Plaintiff is funded in part by government grants and largely by private donations from corporations and individuals.
2. The Defendant, Valerie Cooper, resides in the City of Calgary, in the Province of Alberta.
3. Commencing in or about 2004, the Defendant accepted employment with the Plaintiff as President and Chief Executive Officer.

**Falsified Expense Reports**

4. At a Board Meeting of the Plaintiff held on March 13<sup>th</sup>, 2012, David Rehn, a member of the Board of Directors of the Plaintiff reported to the Board of Directors that he had received information from Calgary City Police Service that, pursuant to a complaint, Calgary City Police Service had commenced an investigation into possible defalcation of funds at the Plaintiff.
5. On March 13<sup>th</sup>, 2012, pursuant to the information received, the Plaintiff placed the Defendant on paid administrative leave.
6. The Plaintiff then conducted an internal audit of the financial records of the Plaintiff. As well, the Board of the Plaintiff received information from the Calgary City Police, that information had reached them with respect to possible defalcation of the Plaintiff by the Defendant.
7. The results of the internal audit disclosed that commencing in 2006 and continuing until on or about March 13, 2012, the Defendant had systematically falsified expense accounts to the Plaintiff in the sum of \$497,586.00 (the "False Expense Claims").

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8. The particulars of the False Expense Claims include, but are not limited to, the following:

(a) The Defendant paid to Sandra Albus to December 31<sup>st</sup>, 2011 the sum of \$89,250.00. The payments to Sandra Albus were supported by false invoices describing the monthly payments as exhibition development. It has been discovered the payments in question were in fact payments for the Defendant's personal rental accommodation in downtown Calgary. The Board of Directors of the Plaintiff had not authorized payment for the Defendant's personal rental accommodation.

(b) Commencing in 2008 and to December 31<sup>st</sup>, 2011, pursuant to invoices totalling \$185,129.00, the Defendant alleged that she had incurred services and purchased art on behalf of the Plaintiff. In each case, the invoices were marked as paid and the Defendant claimed reimbursement for the amount of each invoice on her expense account to the Plaintiff. The gallery or galleries which are alleged to have rendered the services have not in fact rendered any of the services and the art in question was purchased by the Defendant personally. Further, the gallery or galleries have not received any of the funds which the Defendant alleges to have paid them.

(c) Between March, 2009 and December 31<sup>st</sup>, 2011, the Defendant claimed to have loaned certain sums to the Plaintiff for which she was entitled to repayment. In fact, loans in the sum of \$124,000.00 were alleged to have been made to the Plaintiff, without any record of a corresponding deposit to the accounts of the Plaintiff. How was this approved?

(d) Between February, 2006 and December 31<sup>st</sup>, 2011, the Defendant claimed reimbursement for travel on behalf of the Plaintiff, none of which was authorized or approved by the Board of Directors. The unauthorized travel expenses claimed totalled \$66,978.00.

(e) The Defendant also claimed reimbursement between 2008 and December 31<sup>st</sup>, 2011 of \$19,396.00 for non-approved goods and services, including frequent

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massages, monthly parking, credit card fees, home maintenance, cleaning and clothing purchases.

(f) Commencing September 4<sup>th</sup>, 2008 and again in March, 2011, the Defendant purchased personal art in the sum of \$12,126.00 which was unauthorized and unknown to the Plaintiff.

(g) Such further and other particulars as will be proven at the trial of this matter.

9. The reimbursement cheques for the False Expense Claims were paid directly to the Defendant's personal bank account or to Sandra Alvus as landlord.

10. The Board received constant reports from the Defendant that the Plaintiff was in dire financial straits and from time to time other members of the Board did in fact make personal loans, without interest, to the Plaintiff to cover operating expenses pending receipt of grant funds.

11. Because of the personal relationships between the Defendant and individual members of the Board of Directors and because the Board relied heavily upon the Defendant to administer the organization, the members of the Board of Directors had no reason to and did not suspect that funds were being diverted to the Defendant's personal use.

12. The Defendant has been provided with details of the False Expense Claims by the Plaintiff. Reimbursements has been demanded but to date the Plaintiff has neglected or refused to reimburse the Plaintiff.

#### Debt

13. By virtue of the facts set out above, the amount of the False Expense Claims is a debt due and payable and owing to the Plaintiff.

14. In these premises, and such further and other premises as will be proven at the trial of this matter, the Plaintiff states that it entitled to Judgment in the amount of the False Expense Claim.

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**Breach of Fiduciary Duty**

15. Further, or in the alternative, based on the senior position held by the Defendant within the Plaintiff's organization, and the significant level of trust placed in the Defendant, the Plaintiff was particularly vulnerable to the conduct of the Defendant. Accordingly, the Defendant owed a fiduciary duty to the Plaintiff to ensure the False Expense Claims were not made. The Defendant breached that fiduciary duty and the Plaintiff has suffered loss in at least the amount of the False Expense Claims as a result.
16. In these premises, and such further and other premises as will be proven at the trial of this matter, the Plaintiff states that it is entitled to damages as against the Defendant for breach of fiduciary duty in the amount of the False Expense Claims.

**Conversion**

17. In the alternative, the False Expense Claims was a wrongful conversion of the Plaintiff's property for the sole benefit of the Defendant.
18. In these premises, and such further and other premises as will be proven at the trial of this matter, the Plaintiff states that it is entitled to an award of damages as against the Defendant compensating it for the wrongful conversion of the False Expense Claims.

**Unjust Enrichment**

19. In the further alternative, by virtue of the facts set out above and such other facts as will be proven at trial, the Defendant has been unjustly enriched, in that it has retained the full benefit of the False Expense Claims and the Plaintiff has suffered a corresponding deprivation in the amount of the False Expense Claims, for which there is no juridical reason.
20. On this premise, and such further and other premises as will be proven at the trial of this matter, the Plaintiff states that it is entitled to an award of damages to compensate it for the Defendant's unjust enrichment in the amount of the False Expense Claims.

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21. Further, or in the alternative, the Defendant holds any assets, goods or other chattel, including but not limited to art and investments, which have been obtained by virtue of the False Expense Claims for the benefit of the Plaintiff by virtue of a constructive trust.

**Remedy Sought:**

- (a) Judgment in favour of the Plaintiff in the sum of \$500,000.00;
- (b) An Interim and permanent injunction restraining the Defendant from disposing of any assets pending the hearing and determination of this action;
- (c) An Order directing the Defendant to account for the False Expense Claims and allowing the tracing of the Defendant's assets and accounts to determine the extent of any assets, goods or chattel that were obtained by the Defendant through the funds obtained by the False Expense Claims;
- (d) An Order directing that any assets, goods, or chattel held by the Defendant are held by the Defendant for the benefit of the Plaintiff pursuant to a constructive trust and directing the Defendant to deliver and transfer such assets, goods, or chattel to the Plaintiff;
- (e) Such further and other relief as this Honourable Court may allow;
- (f) Interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c.J-1; and
- (g) Costs of the within action.

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**NOTICE TO THE DEFENDANT**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiffs' address for service.

**WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the Plaintiffs against you.

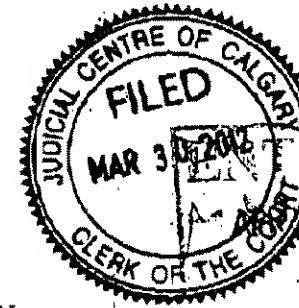
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Clerk's stamp:

COURT FILE NUMBER 1201-0483



COURT COURT OF QUEEN'S BENCH

JUDICIAL CENTRE CALGARY

PLAINTIFF THE ART GALLERY OF CALGARY SOCIETY

DEFENDANT VALERIE COOPER

**AFFIDAVIT**

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF PARTY  
FILING THIS DOCUMENT

Kenneth P. Reh  
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Calgary, AB T2P 0C1  
Phone: (403) 698-8720  
Fax: (403) 213-4467  
File No.: 61909-00001/KPR

**AFFIDAVIT OF GWEN K. RANDALL**

Sworn on March 30, 2012

I, GWEN K. RANDALL, of the City of Calgary, in the Province of Alberta, Barrister and Solicitor, **SWEAR AND SAY THAT:**

- I am the Chair of the Board of The Art Gallery of Calgary Society (the "AGC"). I have held this volunteer position since approximately 2008. I have been a member of the Board of Directors of the AGC since 2004. As such, I have personal knowledge of the matters deposed to herein, except where stated to be based upon information and belief, in which case I believe such information to be true.

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2. The AGC operates a non-collecting art gallery in the City of Calgary which displays changing local, national and international art exhibitions to the general public. The AGC is funded in part by government grants. The majority of the funding, however, comes from private donations from foundations, corporations and individuals. The AGC is a registered charitable institution pursuant to the provisions of the Canada *Income Tax Act*.

3. On or about March 9<sup>th</sup>, 2012, David Rehn, also a member of the Board of Directors of the AGC, was contacted by the Calgary Police Service with respect to certain information which the Calgary Police Service had received suggesting defalcation of funds at the AGC.

4. On March 13<sup>th</sup>, 2012, Mr. Rehn reported to a meeting of the Board of Directors of the AGC that at a meeting with the Calgary Police Service, he had been shown a series of invoices on the letterhead of Masters Gallery, which is a commercial gallery and framing service in the City of Calgary. The invoices totalled \$106,515.11. The invoices were handwritten and described numerous framing assignments and the purchase of pieces of original art. Each of the invoices in question was marked paid.

5. Mr. Rehn was also advised by the Calgary Police Service that they visited Masters Gallery and had learned that the invoices were false and that no services had been performed for AGC. However, Masters Gallery advised that the painting in question had been sold to the Defendant.

6. Also in his meeting with the Calgary Police Service, Mr. Rehn was shown information from the Defendant's personal bank account, which the Calgary Police Service had obtained by court order, that reimbursement cheques to the Defendant were written on the AGC bank account for the fictitious Masters Gallery invoices, and that the funds were deposited into the Defendant's personal account.

7. As a result of the information received, the AGC placed the Defendant on paid administrative leave. The AGC then arranged an internal audit of the AGC's financial records. The audit was conducted by Brian Hearst, a former auditor, who is now the volunteer treasurer of the AGC.

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8. The internal audit identified defalcation of \$497,586. Attached as Exhibit "A" to my Affidavit is a copy of the results of the internal audit.

9. The results of the internal audit disclosed that commencing in 2006 the Defendant had systematically falsified expense accounts to the Plaintiff in the sum of \$497,586.00.

10. The Defendant paid to Sandra Alvus to December 31<sup>st</sup>, 2011 the sum of \$89,250.00. The payments to Sandra Alvus were supported by false invoices describing the monthly payments as exhibition development. The payments in question were in fact payments for the Defendant's personal rental accommodation in downtown Calgary. The Board of Directors of the Plaintiff had not authorized payment for the Defendant's personal rental accommodation.

Who is  
Sandra Alvus?  
L>ALBUS  
L> Lawyer?

11. Commencing in 2008 and to December 31<sup>st</sup>, 2011, pursuant to invoices totalling \$185,129.00, the Defendant alleged that she had incurred services and purchased art on behalf of the Plaintiff. In each case, the invoices were marked as paid and the Defendant claimed reimbursement for the amount of each invoice on her expense account to the Plaintiff. The Plaintiff was informed by the Calgary Police Service that the Commercial Art Gallery alleged to have rendered the services, had not in fact rendered any of the services and that the art in question was purchased by the Defendant personally. The Commercial Gallery also confirmed that the funds alleged to have been received from the Defendant were not in fact received from the Gallery.

12. Between March, 2009 and December 31<sup>st</sup>, 2011, the Defendant claimed to have loaned certain sums to the Plaintiff for which she claimed repayment. In fact, loans in the sum of \$124,000.00 were alleged to have been made by the Defendant, with no record of corresponding deposits to the accounts of the Plaintiff.

13. Between February, 2006 and December 31<sup>st</sup>, 2011, the Defendant claimed reimbursement for travel on behalf of the Plaintiff, none of which was authorized or approved by the Board of Directors. The unauthorized travel expenses claimed totalled \$66,978.00.

L&gt; why was this approved?

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14. The Defendant also claimed reimbursement between 2008 and December 31<sup>st</sup>, 2011 of \$19,396.00 for non-approved goods and services, including frequent massages, monthly parking, credit card fees, home maintenance, cleaning and clothing purchases. -> this was paid? why?
15. Commencing September 4<sup>th</sup>, 2008 and again in March, 2011, the Defendant purchased personal art in the sum of \$12,126.00 which was unauthorized and unknown to the Plaintiff. The art in question hangs in the Defendant's home, where the Deponent has personally observed it.
16. Pursuant to information received from the Calgary Police Service who had subpoenaed the Defendant's personal bank records, it was learned that the reimbursement cheques for these amounts were paid directly to the Defendant's personal bank account or to Sandra Alvus as landlord.
17. On the evening that the Defendant was placed on administrative leave, she left the AGC initially at approximately 7:00 p.m. After the members of the board left the AGC, the Defendant returned briefly but did not go beyond the foyer. A short time later, after the last staff member had locked the building, the Defendant returned and was in the building for an additional 5 hours. The building is protected by Chubb Security and the AGC has in its possession a copy of the video tape from that evening clearly showing the Defendant's entry in and out of the AGC. The video tape clearly shows the Defendant leaving AGC with two cardboard boxes. AGC has been unable to locate its payables file for the year 2012. Certain personnel files of employees of AGC also cannot be located. AGC has requested return of the records from the Defendant, but as of the date of this Affidavit, the documents have not been delivered. -> [have does been recovered] ?
18. I personally have been interviewed by the Calgary Police Service with respect to the pending charges, particularly involving the false invoices to the Commercial Gallery and the false invoices for the Defendant's rent. Brian Hearst has also been interviewed, as has the bookkeeper from the AGC who is a part-time consultant working one day per week at the AGC.

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19. From the time of the commencement of her employment, the Defendant cultivated personal relationships with a number of the members of the Board of Directors of the AGC, including this deponent. Because of a personal relationship between the Defendant and members of the Board of Directors, and because of the complete trust imposed by the Board of Directors upon the Defendant to manage the affairs of the AGC, neither I, nor other members of the Board, to my knowledge, had any reason to suspect that the Defendant was converting AGC funds to her personal use. *→ Must have known there were problems.  
→ Lifestyle didn't raise eyebrows?*

20. It is my belief, the information as to this defalcation will result in a serious detriment to the ability of AGC to receive government, corporate or individual donations, and may impair the AGC registration as a charity under The Canada Income Tax Act.

21. I make this affidavit in support of an *ex parte* application for a pre-judgment attachment order attaching the assets of Valerie Cooper pursuant to Section 18 of the *Civil Enforcement Act*, R.S.A. 2000, c. C-15. I also swear this Affidavit in support of Orders requiring financial institutions and the Registrars of Land Titles and Motor Vehicles to provide information to me.

22. In addition, I swear this affidavit in support of an *ex parte* application that the Court file is to remain sealed pending the investigation by the City of Calgary Police Service.

23. As authorized by the Board of the AGC, the Gallery undertakes to pay any damages which may arise as a result of the granting of the relief sought herein.

SWORN BEFORE ME at the City of Calgary, )  
 in the Province of Alberta, this 30 day of )  
 March, 2012. )

M. Williams )  
 A COMMISSIONER FOR OATHS IN THE )  
 PROVINCE OF ALBERTA )

Gwen Randall )  
 GWEN K. RANDALL )

MARY WILLIAMS  
 A Commissioner for Oaths  
 in and for the Province of Alberta 13  
 By Commission Expires Apr. 14, 2013  
 Davis 11110349.2